

**REMARKS**

Claims 12, 23, 34, and 40-42 are amended herein for minor changes in form without narrowing the claims within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 56 USPQ2d 1865 (Fed. Cir. 2000). No new matter is presented and, accordingly, approval and entry of the foregoing amended claims are respectfully requested.

Claims 8-17, 19-28 and 30-42 are pending and under consideration. Reconsideration is requested.

In item 6 of the Office Action, the Examiner rejects independent claims 12, 23, and 34 (and respective dependent claims 8-11, 13-17, and 40, claims 24-28, 30-33, and 41, and claims 35-39 and 42) under 35 U.S.C. §103(a) as obvious under Alexander, III et al. (U.S.P. 6,002,872) in view of Smolders (U.S.P. 6,253,338) and Yeh et al. (U.S.P. 6,427,206).

The rejections are traversed.

**Recited Features Not Taught By Cited Art**

Independent claims 12, 23, and 34 respectively recite an apparatus, a computer readable medium, and a method using claim 12 as an example "identifying a type of said branch instruction by obtaining an instruction code from said branch source address and decoding said instruction code; and . . . and when the identified branch instruction is neither a calling instruction nor a return instruction, said interrupt is terminated."

Applicants submit that the features are not discussed by the art relied on by the Examiner, alone or in an *arguendo* combination.

Rather, Smolder, in detail, discusses (col. 4, lines 30-35) that a "counter level tracing tool 31 saves the address of the beginning of the next basic block of code, which is the address where the interruption came from as shown in step 34" (emphasis added), and not "so as to provide a return address," as the Examiner mistakenly contends.

**Examiner's Statements Not Supported**

Applicant respectfully submits that the Examiner continues to base the rejections on improperly supported statements. Further, Applicant respectfully submits that Examiner is continuing to combine several references in such a manner without the prior art suggesting the desirability of the combination.

The Applicant respectfully traverses the Examiner's statement and demands the Examiner produce authority for the statement. The Applicant specifically points out the following

errors in the Examiner's action. As a first example, the Examiner bases the rejections, in part, on his contention that it would have been obvious:

to supplement the profiling system of Alexander with the features taught by Smolders and to substitute the timer interrupt of Alexander with the branch interrupt of Smolders.

(Emphasis added, Action at page 6.)

While Alexander does discuss (see, for example, col. 11, lines 23-25) that "other interrupts may be used to trigger the described sampling mechanism," on the other hand Alexander clearly discusses:

(a) sample is obtained each time a periodic event, such as, for example, a timer interrupt occurs (emphasis added).

(See, for example, col. 5, lines 35-40.)

Smolders discusses the trace interrupt as

the instruction flow unit 26 is programmed to generate a trace interrupt after each branch by setting a specified branch trace enable bit 80 in the machine state register 76. . . . the equivalent of the BE bit in the MSR and an automatic trace interruption after each branch, the processor would be programmed in single-step mode, i.e. to generate a trace interruption after each instruction. In such a case, the code handling the trace interruptions will have to check for branch instructions. When a branch is found, the flow of execution proceeds as described below in FIG. 3, if the instruction was not a branch, the flow of execution simply returns to the next instruction in sequence without any additional action.

(See, for example, cols. 3-4 starting at line 58).

That is, the Examiner has not supported his statement that Alexander's discussion of a periodic event, such as, for example, a timer interrupt is replaceable with a "trace interrupt" as taught by Smolders.

Rather, Alexander merely discusses (col. 8, lines 49-52) that "(i)nstead of employing a timer interrupt, a page fault interrupt may be used as a signal to gather data from the stack." That is, the Examiner has not provided the required support in support of his contention that it would have been obvious to modify Alexander to include branch interrupts.

In addition, while the Action concedes that "Alexander in view of Smolders in view of Yeh does not expressly disclose the recited table names and pointers," the Examiner incorrectly bases the rejections on the contention that:

Alexander in view of Smolders in view of Yeh discloses that the data structure may include such pointers and tables to aid in subsequent analysis . . . . it would have been obvious . . . to supplement the data structure of Alexander in view of Smolders in view of Yeh with other pointers and tables, as suggested by Alexander, including an executor managing table, a

subroutine managing table, and a calling managing table, each with corresponding pointers, for the purpose of facilitating subsequent analysis of the profiles.

(See, for example, Action at page 13).

However, none of the cited art discusses "an executor managing table, a subroutine managing table, and a calling managing table."

Accordingly, Applicant request that the Examiner properly support his conclusory contentions with a reference and a motivation to combine the same that supports the Examiner's statement that by merely referring to "tables" discusses features of a control table including "an executor managing table, a subroutine managing table, and a calling managing table."

Applicant submits that noticed facts are not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention. See M.P.E.P. § 2144.03(a) ("the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

In addition, there is no evidence supporting the Examiner's assertions. See M.P.E.P. § 2144.03(b) ("there must be some form of evidence in the record to support an assertion of common knowledge").

It also appears that the Examiner bases the rejection, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support such assertion with an affidavit.

### **Summary**

Since *prima facie* obviousness is not established, the rejection should be withdrawn and claims 8-17, 19-28 and 30-42 allowed.

### **CONCLUSION**

In accordance with the foregoing, it is respectfully submitted that all outstanding rejections have been overcome. Applicant respectfully submits that all claims patentably distinguish over the prior art, taken alone or in any proper combination.

There being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If there are any additional fees associated with filing of this Preliminary Amendment,

please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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